

HOUSE BILL 831

M4

1lr1052

By: **Delegates S. Robinson, Arora, Barkley, Braveboy, Carr, Clippinger, Cullison, Frick, Gilchrist, Holmes, Hucker, A. Kelly, Luedtke, A. Miller, Niemann, Reznik, B. Robinson, Wilson, and Zucker**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2011

CHAPTER _____

1 AN ACT concerning

2 **Agriculture – Invasive Plants – Prevention and Control**

3 FOR the purpose of establishing the Invasive Plants Advisory Committee in the
4 Department of Agriculture; providing for the membership and charge of the
5 Committee; providing for the terms of the members; requiring the Committee to
6 elect a chair, a vice chair, and a secretary of the Committee; requiring the
7 Department to provide staff for the Committee; prohibiting a member from
8 receiving certain compensation, but authorizing a member to receive certain
9 reimbursement; requiring the Secretary of Agriculture to adopt certain
10 regulations by a certain date; prohibiting certain activities involving certain
11 invasive plants under certain circumstances; requiring a person to receive
12 certain approval from the Secretary before engaging in certain activities
13 involving certain invasive plants; ~~requiring~~ authorizing the Secretary to take
14 certain action upon finding certain invasive plants; requiring a person to
15 dispose of certain invasive plants in a certain manner; requiring the Secretary
16 to take certain action if certain invasive plants are not disposed of properly;
17 requiring the ~~State's Attorney~~ Attorney General to institute certain proceedings
18 for certain purposes; requiring the Secretary to issue stop sale orders of certain
19 invasive plants under certain circumstances; authorizing the Secretary to bring
20 an action for injunction under certain circumstances; establishing certain
21 penalties for certain violations under this Act; defining certain terms; and
22 generally relating to the prevention and control of invasive plants.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – Agriculture
3 Section 9.5–101 through 9.5–306 to be under the new title “Title 9.5. Invasive
4 Plants Prevention and Control”
5 Annotated Code of Maryland
6 (2007 Replacement Volume and 2010 Supplement)

7 Preamble

8 WHEREAS, Certain invasive plants that have been introduced into the State
9 are affecting the health and ecological functioning of plant and animal communities in
10 natural areas such as wildlands, parks, forests, lakes and rivers, and managed areas
11 such as farms and backyards; and

12 WHEREAS, Invasive plants can cause ecological damage in numerous ways,
13 including outcompeting native species for resources, reducing biological diversity,
14 disrupting food webs, degrading food and shelter for native animals, altering flooding
15 and fire impacts, and modifying nutrient cycling; and

16 WHEREAS, Some invasive plants have major economic consequences, including
17 reducing, degrading, or relocating valuable species, compromising farm production and
18 food security, and increasing costs of control or management on public and private
19 lands; and

20 WHEREAS, Certain invasive plants that contain toxins and allergens may
21 cause a negative impact to human health; and

22 WHEREAS, Many plants that are invasive to the State and elsewhere in the
23 Mid-Atlantic region were introduced through ornamental horticultural commerce
24 before their invasive habits were realized; and

25 WHEREAS, Other invasive plants have been inadvertently introduced through
26 regular commercial shipping activities; and

27 WHEREAS, Reducing the potential for invasive plants to negatively affect
28 native species and their function is beneficial to the citizens of the State; now,
29 therefore,

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article – Agriculture**

33 **TITLE 9.5. INVASIVE PLANTS PREVENTION AND CONTROL.**

34 **SUBTITLE 1. DEFINITIONS.**

1 **9.5–101.**

2 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) “COMMITTEE” MEANS THE INVASIVE PLANTS ADVISORY
5 COMMITTEE.

6 (C) “INVASIVE PLANT” MEANS A TERRESTRIAL PLANT SPECIES THAT:

7 (1) DID NOT EVOLVE IN THE STATE; AND

8 (2) IF INTRODUCED WITHIN THE STATE, WILL CAUSE OR IS
9 LIKELY TO CAUSE, AS DETERMINED BY THE SECRETARY:

10 (I) ECONOMIC HARM;

11 (II) ECOLOGICAL HARM;

12 (III) ENVIRONMENTAL HARM; OR

13 (IV) HARM TO HUMAN HEALTH.

14 (D) “LANDSCAPING SERVICES” INCLUDES SERVICES FOR ORNAMENTAL
15 HORTICULTURAL DESIGN, MAINTENANCE, AND INSTALLATION OF LIVING
16 PLANTS.

17 (E) “TIER 1 INVASIVE PLANT” INCLUDES INVASIVE PLANT SPECIES
18 THAT CAUSE OR ARE LIKELY TO CAUSE SEVERE HARM WITHIN THE STATE.

19 (F) “TIER 2 INVASIVE PLANT” INCLUDES INVASIVE PLANT SPECIES
20 THAT CAUSE OR ARE LIKELY TO CAUSE SUBSTANTIAL NEGATIVE IMPACT WITHIN
21 THE STATE.

22 **SUBTITLE 2. INVASIVE PLANTS ADVISORY COMMITTEE.**

23 **9.5–201.**

24 **THERE IS AN INVASIVE PLANTS ADVISORY COMMITTEE IN THE**
25 **DEPARTMENT.**

26 **9.5–202.**

27 (A) **THE COMMITTEE CONSISTS OF THE FOLLOWING MEMBERS:**

1 **(1) AS EX OFFICIO MEMBERS:**

2 **(I) THE SECRETARY, OR THE SECRETARY'S DESIGNEE;**

3 **(II) THE SECRETARY OF NATURAL RESOURCES, OR THE**
4 **SECRETARY'S DESIGNEE;**

5 **(III) THE SECRETARY OF TRANSPORTATION, OR THE**
6 **SECRETARY'S DESIGNEE;**

7 **(IV) THE SECRETARY OF THE ENVIRONMENT, OR THE**
8 **SECRETARY'S DESIGNEE; AND**

9 **(V) THE DEAN OF THE COLLEGE OF AGRICULTURE AND**
10 **NATURAL RESOURCES AT THE UNIVERSITY OF MARYLAND, COLLEGE PARK, OR**
11 **THE DEAN'S DESIGNEE; AND**

12 **(2) APPOINTED BY THE SECRETARY:**

13 **(I) IN CONSULTATION WITH THE SECRETARY OF NATURAL**
14 **RESOURCES:**

15 **1. ONE INDIVIDUAL FROM A LANDSCAPING**
16 **INDUSTRY THAT IS REGULATED BY THE DEPARTMENT;**

17 **2. ONE INDIVIDUAL FROM A PLANT WHOLESALE**
18 **INDUSTRY OR A PLANT RETAIL INDUSTRY THAT IS REGULATED BY THE**
19 **DEPARTMENT; AND**

20 **3. ONE INDIVIDUAL FROM A NONGOVERNMENTAL**
21 **ENVIRONMENTAL ADVOCACY ORGANIZATION;**

22 **(II) TWO INDIVIDUALS WITH EXPERIENCE WITH INVASIVE**
23 **PLANTS, AGRICULTURE, HORTICULTURE, GARDENING, CONSERVATION, OR**
24 **OTHER RELEVANT EXPERIENCE; AND**

25 **(III) ONE CONSUMER MEMBER.**

26 **(B) (1) THE TERM OF AN APPOINTED MEMBER IS 3 YEARS AND**
27 **BEGINS ON JANUARY 1.**

28 **(2) AN APPOINTED MEMBER MAY NOT SERVE MORE THAN TWO**
29 **CONSECUTIVE TERMS.**

1 (C) AN APPOINTED MEMBER SHALL SERVE AT THE PLEASURE OF THE
2 SECRETARY.

3 9.5-203.

4 FROM AMONG ITS MEMBERS THE COMMITTEE SHALL ELECT ANNUALLY A
5 CHAIR, A VICE CHAIR, AND A SECRETARY.

6 9.5-204.

7 (A) (1) UNTIL THE SECRETARY ADOPTS REGULATIONS IN
8 ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE, THE COMMITTEE SHALL MEET
9 AT LEAST QUARTERLY.

10 (2) AFTER THE SECRETARY HAS ADOPTED REGULATIONS IN
11 ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE, THE COMMITTEE SHALL MEET
12 AS NEEDED.

13 (B) A MEMBER OF THE COMMITTEE:

14 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE
15 COMMITTEE; BUT

16 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
17 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE
18 BUDGET.

19 (C) THE DEPARTMENT SHALL PROVIDE STAFF FOR THE COMMITTEE.

20 9.5-205.

21 THE COMMITTEE SHALL:

22 (1) ADVISE THE SECRETARY REGARDING REGULATIONS
23 NECESSARY TO CARRY OUT THE PROVISIONS OF THIS TITLE; AND

24 (2) (I) CONDUCT AN ANNUAL REVIEW OF THE RISK
25 ASSESSMENT PROTOCOL ADOPTED UNDER § 9.5-301 OF THIS TITLE; AND

26 (II) REPORT TO THE SECRETARY REGARDING ANY
27 PROPOSED CHANGES TO THE RISK ASSESSMENT PROTOCOL.

28 SUBTITLE 3. REGULATION OF INVASIVE PLANTS.

29 9.5-301.

1 **(A) THE SECRETARY, WITH THE ADVICE OF THE COMMITTEE, SHALL:**

2 **(1) ON OR BEFORE OCTOBER 1, 2012, ADOPT REGULATIONS**
3 **THAT:**

4 **(I) ESTABLISH A SCIENCE-BASED RISK ASSESSMENT**
5 **PROTOCOL FOR INVASIVE PLANTS THAT:**

6 **1. WILL SERVE AS A BASIS FOR CREATING A**
7 **TWO-TIERED REGULATORY APPROACH FOR CONTROLLING INVASIVE PLANTS IN**
8 **THE STATE; AND**

9 **2. CONSIDERS THE HARM, AS DETERMINED BY THE**
10 **SECRETARY, THAT INVASIVE PLANTS CAUSE IN THE STATE, INCLUDING:**

11 **A. ECONOMIC HARM;**

12 **B. ECOLOGICAL HARM;**

13 **C. ENVIRONMENTAL HARM; AND**

14 **D. HARM TO HUMAN HEALTH;**

15 **(II) GOVERN ADMINISTRATIVE ORDERS THAT THE**
16 **SECRETARY MAY ISSUE TO ENFORCE THIS SUBTITLE; AND**

17 **(III) ESTABLISH A PROCEDURE FOR THE APPROVAL**
18 **REQUIRED UNDER § 9.5-302 OF THIS SUBTITLE FOR ACTIVITIES INVOLVING**
19 **TIER 1 INVASIVE PLANTS.**

20 **(2) ON OR BEFORE OCTOBER 1, 2013, ADOPT REGULATIONS**
21 **THAT:**

22 **(I) ESTABLISH A LIST OF TIER 1 PLANTS AND TIER 2**
23 **PLANTS IN ACCORDANCE WITH THE RISK ASSESSMENT PROTOCOL ADOPTED**
24 **UNDER PARAGRAPH (1) OF THIS SUBSECTION;**

25 **(II) ESTABLISH A PROCEDURE FOR CLASSIFICATION OR**
26 **DECLASSIFICATION OF AN INVASIVE PLANT AS A TIER 1 INVASIVE PLANT OR A**
27 **TIER 2 INVASIVE PLANT;**

28 **(III) PHASE IN THE IMPLEMENTATION OF THE**
29 **REQUIREMENTS OF THIS SUBTITLE WITH CONSIDERATION OF THE ECONOMIC**

1 IMPACT OF THESE REQUIREMENTS ON NURSERIES, LANDSCAPERS, PLANT
2 WHOLESALERS, PLANT RETAILERS, AND ANY OTHER INDUSTRY;

3 (IV) ESTABLISH A PROCEDURE FOR THE DISPOSAL OF TIER 1
4 PLANTS;

5 (V) DESIGNATE THE FORMAT, SIZE, AND CONTENT OF THE
6 SIGN REQUIRED UNDER § 9.5-302(B)(1) OF THIS SUBTITLE; AND

7 (VI) PROVIDE FOR THE DISTRIBUTION OF A LIST OF TIER 2
8 INVASIVE PLANTS TO LICENSED NURSERIES, PLANT DEALERS, AND PLANT
9 BROKERS ON AN ANNUAL BASIS.

10 9.5-302.

11 (A) (1) THIS SUBSECTION DOES NOT APPLY TO THE TRANSFER,
12 LEASE, SALE, OR PURCHASE OF REAL PROPERTY ON WHICH AN INVASIVE PLANT
13 IS LOCATED.

14 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
15 SUBSECTION AND IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
16 SECRETARY, A PERSON MAY NOT PROPAGATE, IMPORT, TRANSFER, SELL,
17 PURCHASE, TRANSPORT, OR INTRODUCE ANY LIVING PART OF A TIER 1
18 INVASIVE PLANT IN THE STATE.

19 (3) ~~WITH RESPECT TO A TIER 1 INVASIVE PLANT, A PERSON~~
20 ~~SHALL RECEIVE APPROVAL FROM THE SECRETARY BEFORE~~ A PERSON MAY
21 CONDUCT AN ACTIVITY PROHIBITED UNDER PARAGRAPH (2) OF THIS
22 SUBSECTION IF:

23 (I) THE PERSON RECEIVES APPROVAL FROM THE
24 SECRETARY BEFORE CONDUCTING THE ACTIVITY; AND

25 (II) THE ACTIVITY IS FOR THE PURPOSE OF:

26 ~~(I)~~ 1. DISPOSING OF THE INVASIVE PLANT;

27 ~~(II)~~ 2. CONTROLLING THE INVASIVE PLANT;

28 ~~(III)~~ 3. USING THE INVASIVE PLANT FOR RESEARCH OR
29 EDUCATIONAL PURPOSES; OR

30 ~~(IV)~~ 4. EXPORTING THE INVASIVE PLANT OUT OF THE
31 STATE.

1 (B) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
2 SECRETARY, A PERSON MAY NOT:

3 (1) SELL OR OFFER FOR SALE AT A RETAIL OUTLET A TIER 2
4 INVASIVE PLANT UNLESS THE RETAIL OUTLET POSTS IN A CONSPICUOUS
5 MANNER IN PROXIMITY TO ALL TIER 2 PLANT DISPLAYS, A SIGN IDENTIFYING
6 THE PLANTS AS TIER 2 PLANTS; OR

7 (2) PROVIDE LANDSCAPING SERVICES TO PLANT OR SUPPLY FOR
8 PLANTING A TIER 2 INVASIVE PLANT UNLESS THE PERSON PROVIDES TO ITS
9 CUSTOMER A LIST OF TIER 2 INVASIVE PLANTS.

10 **9.5-303.**

11 (A) ON FINDING A TIER 1 PLANT IN VIOLATION OF § 9.5-302(A)(2) OF
12 THIS SUBTITLE, THE SECRETARY ~~SHALL~~ MAY:

13 (1) ISSUE A WRITTEN CONDEMNATION SEIZURE ORDER;

14 (2) MARK OR TAG THE PLANT IN A CONSPICUOUS MANNER; AND

15 (3) PROVIDE WRITTEN NOTICE TO THE OWNER, TENANT, OR
16 PERSON IN CHARGE OF THE PREMISES.

17 (B) (1) ON NOTICE FROM THE SECRETARY, A PERSON SHALL DISPOSE
18 OF A TIER 1 PLANT IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
19 SECRETARY.

20 (2) IF A TIER 1 PLANT IS NOT DISPOSED OF IN ACCORDANCE WITH
21 PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY SHALL:

22 (I) DESTROY THE PLANT;

23 (II) PREPARE A STATEMENT OF FACTS AND A STATEMENT
24 OF THE EXPENSE OF DESTRUCTION; AND

25 (III) PROVIDE COPIES OF THE STATEMENTS TO THE ~~STATE'S~~
26 ~~ATTORNEY OF THE COUNTY IN WHICH THE OWNER OF THE PROPERTY RESIDES~~
27 ATTORNEY GENERAL.

28 (C) (1) THE ~~STATE'S ATTORNEY~~ ATTORNEY GENERAL SHALL
29 INSTITUTE THE APPROPRIATE PROCEEDING TO COLLECT THE EXPENSES DUE
30 TO THE SECRETARY.

1 **(2) A COPY OF THE STATEMENTS PREPARED UNDER SUBSECTION**
2 **(B)(2) OF THIS SECTION IS SUFFICIENT EVIDENCE TO PROVE A CLAIM UNDER**
3 **THIS SUBSECTION.**

4 **9.5-304.**

5 **(A) IF THE SECRETARY FINDS THAT A TIER 2 PLANT DOES NOT MEET**
6 **THE SIGNAGE REQUIREMENT UNDER § 9.5-302(B)(1) OF THIS SUBTITLE, THE**
7 **SECRETARY SHALL:**

8 **(1) ISSUE A STOP SALE ORDER; AND**

9 **(2) MARK OR TAG THE PLANT IN A CONSPICUOUS MANNER.**

10 **(B) THE SECRETARY SHALL GIVE WRITTEN NOTICE OF A FINDING MADE**
11 **UNDER SUBSECTION (A) OF THIS SECTION TO THE OWNER, TENANT, OR PERSON**
12 **IN CHARGE OF THE PREMISES.**

13 **(C) A STOP SALE ORDER ISSUED UNDER THIS SECTION SHALL REMAIN**
14 **IN EFFECT UNTIL THE REQUIRED SIGNAGE IS POSTED.**

15 **9.5-305.**

16 **(A) THE SECRETARY MAY BRING AN ACTION FOR AN INJUNCTION**
17 **AGAINST A PERSON TO:**

18 **(1) ENFORCE THIS SUBTITLE;**

19 **(2) ENFORCE AN ORDER OF THE SECRETARY UNDER THIS**
20 **SUBTITLE; OR**

21 **(3) PREVENT OR RESTRAIN A VIOLATION OF THIS SUBTITLE.**

22 **(B) IN AN ACTION FOR AN INJUNCTION BROUGHT UNDER THIS SECTION,**
23 **THE SECRETARY DOES NOT HAVE TO ALLEGE OR PROVE THAT:**

24 **(1) AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR**

25 **(2) SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT**
26 **FROM THE CONTINUED VIOLATIONS.**

27 **(C) AN INJUNCTION INSTITUTED UNDER THIS SECTION SHALL BE**
28 **ISSUED WITHOUT BOND.**

29 **9.5-306.**

1 **(A) A PERSON THAT VIOLATES THIS SUBTITLE IS SUBJECT TO THE**
2 **PENALTIES AND FINES SET FORTH IN TITLE 12 OF THIS ARTICLE.**

3 **(B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTY**
4 **AUTHORIZED UNDER THIS ARTICLE, THE SECRETARY MAY IMPOSE A CIVIL**
5 **PENALTY NOT EXCEEDING \$500 FOR EACH VIOLATION ON A PERSON THAT**
6 **VIOLATES:**

7 **(I) THIS SUBTITLE; OR**

8 **(II) ANY ORDER ISSUED BY THE SECRETARY UNDER THIS**
9 **SUBTITLE.**

10 **(2) PENALTIES COLLECTED BY THE SECRETARY UNDER THIS**
11 **SUBSECTION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.